

**UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF COMMERCE**

WEAVER’S COVE ENERGY, LLC)	
Appellant,)	
v.)	Case No. _____
MASSACHUSETTS OFFICE OF COASTAL)	
ZONE MANAGEMENT,)	
Respondent.)	
)	
MILL RIVER PIPELINE, LLC)	
Appellant,)	
v.)	Case No. _____
MASSACHUSETTS OFFICE OF COASTAL)	
ZONE MANAGEMENT,)	
Respondent.)	
)	

**RESPONDENT’S REPLY TO APPELLANTS' JOINT OPPOSITION TO
RESPONDENT'S MOTION TO FURTHER SUPPLEMENT THE DECISION RECORD
AND EXPEDITED MOTION TO STAY SUPPLEMENTAL BRIEFING**

On January 9, 2008, the Appellants submitted a joint answer in opposition to the January 4, 2008 motion of respondent Massachusetts Office of Coastal Zone Management (MCZM) to further supplement the Decision Record with seven documents.¹ Appellants also oppose MCZM’s expedited request that, if the Secretary believes that supplemental briefing related to these seven documents is appropriate, that for the sake of administrative efficiency, the Secretary stay the current round of supplemental briefing on the relevance of the United States Coast Guard’s Letter of Recommendation (due to commence January 11, 2008) and combine all supplemental briefing into a single round of supplemental briefing to commence 10 days after the Secretary’s ruling on the motion to further supplement the record. MCZM replies as follows:

¹ For detailed descriptions of the documents, see the Index to the Exhibits, attached to MCZM’s Jan. 4, 2008 motion.

1. Appellants oppose inclusion in the decision record of five recent documents (attached to the motion as Exhibits A-E) constituting actions taken by the Massachusetts Department of Environmental Protection (MassDEP) on Appellants' pending applications for various permits, licenses, certification, and other approvals (collectively, "Permits") that were required before MCZM could act on Appellants' request for federal consistency review of their proposed dredging activities. The absence of these state Permits necessitated the objections that are the subject of these appeals. Appellants contend that because the Secretary's review is *de novo* and not on the propriety of the MCZM's objections, that the views of MassDEP as set out in these five documents are beside the point. However, the Secretary's review requires him to evaluate whether the furtherance of national interests, if any, outweigh adverse coastal effects of the proposed Project. As discussed in MCZM's opening brief (Brief for Respondent, Nov. 5, 2007), at 14-20 (Argument I.B.), the proffered MassDEP documents – outstanding at that time -- relate directly to the identification of adverse coastal effects.

2. Appellants' contention that the two documents directly related to a challenge to the validity and force of the USCG's LOR (attached to the motion as Exhibits F and G) should not be included in the decision record is directly at odds with the Secretary's January 2, 2008 ruling. The reasoning of the January 2 ruling applies equally to these two documents.

3. Just as the opening briefs argue multiple issues, so can any supplemental briefing. Appellants' contention that because the LOR-related documents and the MassDEP documents relate to different aspects of these appeals, they cannot be briefed in the same papers, makes no sense.

For the foregoing reasons, the Secretary should accept the seven documents attached to its motion as Exhibits A-G and include them in decision record for these consistency appeals.

Respectfully submitted,

MASSACHUSETTS OFFICE OF
COASTAL ZONE MANAGEMENT
By its attorney,

MARTHA COAKLEY
ATTORNEY GENERAL

/s/ Carol Iancu

By: Carol Iancu
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
Tel. (617) 727-2200, ext. 2428

Dated: January 10, 2008

CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2008, I caused a true and accurate copy of the foregoing motion be served by first-class mail, postage prepaid, and electronic courtesy copies to be sent to the following:

Bruce F. Kiely
Jessica A. Fore
Emil J. Barth
Baker Botts, LLP,
1299 Pennsylvania Ave., NW
Washington, DC 20004

Ralph T. Lepore, III
Dianne R. Phillips
10 St. James Avenue
Boston, MA 02116

/s/ Carol Iancu
Carol Iancu